**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**
**WRIT PETITION NO: 1033 OF 2001 (M/S)**
**(Old No. 16307 of 2000)**

Pramod Kumar Sharma son of O.P. Sharma, resident of village Nagala, Imarati, P.O. Milap Nagar, district Hardwar.

------Petitioner.

Versus

1. Deputy Labour Commissioner, Saharanpur.
2. Registrar, Roorkee University, Roorkee, district Hardwar.

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Respondents

Sri Pankaj Miglani, learned counsel for petitioner.
Sri Vipul Sharma, learned Counsel for respondents.

**Dated : April 17, 2006.**
**HON'BLE RAJESH TANDON, J.**

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 07.12.1998 by which the reference has been rejected by the Deputy Labour Commissioner.

Briefly stated, according to the case of the petitioner he was working as a Pump operator in Roorkee University from 12.12.1982 to 30.06.1987. He moved an application under section 2-A of Industrial Disputes Act and the case was registered on 23.07.1998 and the delay was also condoned in filing the application under reference. However, the same has been rejected by a cryptic order to the following effect:

''आदेश्र

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|---|---|
| प्रेषक, | प्रेषित, |
| उप श्रमायुक्त | पुत्र श्री ओम प्रकाश, |
| सहारनपुर। | निवासी ग्राम– नंगला |
| इमरती | पो–मिलापनगर, हरिद्वार |

आप द्वारा निम्नांकित संराधन विवाद सेवा समाप्ति के सम्बन्ध में सेवायोजकों के विरूद्व संस्थित किया गया था। उक्त विवाद को औघोगिक विवाद न मानते हुए शासन द्वारा अभिनिर्णय हेतु अनुपयुक्त माना गया है। अतएवं उक्त सरांधन विवाद दाखिल दो तर किया जाता है।

कारण–

अधिनियम के अर्न्तगत वादी को औघोगिक कर्मचारी प्रमाणित न होना।

उप श्रमायुक्त उ0प्र0
सहारनपुर क्षेत्र''

ब्ounsel for the petitioner has referred the judgment of Sharad Kumar Vs Government of NCT of Delhi and others (2002)4 Supreme Court Cases 490 where it has been held as under:

*"We are of the view that determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered in such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2s of the Act, thereby terminating the proceedings prematurely such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Thus, the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable."*

In view of the aforesaid facts and circumstances the matter is remanded to the Deputy Labour Commissioner for referring the matter in accordance with law.

Subject to aforesaid observations, the writ petition succeeds and is allowed. No order as to costs.

**(Rajesh Tandon, J)**

17.04.2006.
Negi.